

Claimant testified that his left hand was struck by a piece of metal on January 4, 2001. Immediately following the accident, claimant stated that his arm went numb. However, respondent's records and the testimony of David Farrar, claimant's supervisor, contradict claimant's statements. Mr. Farrar testified that claimant advised him only of a

left wrist injury, with no mention of the arm or shoulder. The medical records contemporaneous with the January 4, 2001, accident specify only a left wrist injury. However, by January 8, 2001, claimant was complaining of pain up into his arm. By January 11, 2001, the medical records verify claimant's complaints were into the shoulder. An MRI done shortly thereafter verified a partial rotator cuff tear in claimant's left shoulder.

Claimant contends a language problem between himself and Mr. Farrar caused the misunderstanding. Claimant primarily speaks Spanish, although he can with limited ability speak broken English. Mr. Farrar testified that he would not normally have much difficulty conversing with claimant without a translator. However, it was noted a translator was required at the preliminary hearing and, on at least two occasions during the hearing, there was some confusion regarding what was being communicated even with the assistance of a translator.

K.S.A. 44-520 requires respondent be given notice of accidental injury within ten days of the date of accident. In this instance, the testimony and medical records verify claimant advised respondent of the accident on January 4, 2001. Within ten days of the accident claimant's complaints included both the arm and the shoulder on the left side. The Appeals Board, therefore, finds claimant satisfied the requirements under K.S.A. 44-520 and timely notice was provided to respondent.

The Appeals Board further finds for preliminary hearing purposes that claimant has proven that he suffered accidental injury arising out of and in the course of his employment, including the arm and shoulder. The Board acknowledges conflicting testimony between claimant and Mr. Farrar, as well as conflicting evidence from the medical records. However, within four days of the accident, claimant's symptoms had increased to include the arm and, within seven days, the medical records verified complaints to his shoulder. The MRI of January 19, 2001, verified a possible rotator cuff tear. The record contains no explanation for this injury other than the January 4, 2001, accident described by claimant.

The Appeals Board finds for preliminary hearing purposes that the Order of the Administrative Law Judge should be affirmed.

As is always the case, preliminary findings are not binding in a full hearing on the claim, but are subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated April 16, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Eric K. Kuhn, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director